

IN THE UNITED STATES COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

LM RESTAURANTS, INC., * Civil Action No.

Plaintiff, *

v. *

DMC ENTERPRISES, INC. *
d/b/a PADONIA ALE HOUSE,
* *

* * * * * * * * * * * *

COMPLAINT – JURY TRIAL DEMANDED

Plaintiff LM Restaurants, Inc. (“LMR”), complains of Defendant DMC Enterprises, Inc., doing business as PADONIA ALE HOUSE (“Padonia”), as follows:

PARTIES

1. LMR is a North Carolina corporation with its principle place of business in Raleigh, North Carolina.
2. Upon information and belief, Padonia is a Maryland corporation.
3. Padonia has a principle place of business in Timonium, Maryland.

JURISDICTION AND VENUE

4. This case is brought pursuant to the Lanham Act, 15 U.S.C. 1051, *et seq.*, and the Copyright Act, 17 U.S.C. 101, *et seq.* This Court has jurisdiction pursuant to 28 U.S.C. § 1331. This Court has jurisdiction over LMR’s state law claims arising under the same nucleus of facts pursuant to 28 U.S.C. § 1367.

5. Padonia does business in this judicial district and operates at 63 E Padonia Road, Timonium, MD 21093.

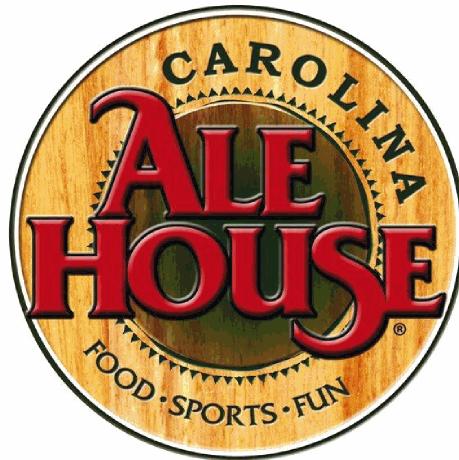
FACTS

6. LMR is a North Carolina based restaurant management company. LMR manages and operates restaurants, to include the chain of sports-themed restaurants known as the CAROLINA ALE HOUSE (“CAH”).

7. LMR started CAH in Raleigh in 1999. Since then, LMR expanded the CAH to twenty one locations in states along the Eastern Seaboard and an additional location in Texas. Lauded as one of the fastest growing private companies in the Raleigh, North Carolina area, the CAH continues to actively expand its operations and add restaurant locations. Four more CAH locations are set to open in the near future.

8. LMR owns the CAH brand, as well as all intellectual property associated with the chain.

9. LMR owns U.S. Service Mark Registration No. 3,038,753 for the CAH stylized logo used in conjunction with restaurant and sports bar services. A copy of LMR’s federal registration is attached hereto as Exhibit A. LMR also has common law rights in its CAH trademarks. A copy of LMR’s CAH logo is shown below:



10. In designing the CAH logo, LMR used the Fritz Quadrata Bold font for ALE HOUSE. LMR designers then made stylized changes to the A in “Ale” and the S in “House.” Because these stylized changes were specially created by LMR, they are not available as part of Fritz Quadrata Bold font packages.

11. LMR selected, coordinated, arranged, and designed the unique arrangement of colors, patterns, terms, fonts, and visual textures shown in the CAH logo.

12. The CAH logo comprises a work of art, copyrightable under 17 U.S.C. 101 *et seq.*

13. LMR submitted a completed Application for Copyright Registration with the Copyright Office. LMR included with its completed application the necessary fees and deposit material. The deposit material depicts the colored, stylized CAH logo.

14. LMR actively works to promote, protect, and advertise its CAH brand. LMR spends substantial advertising dollars marketing its services under the CAROLINA ALE HOUSE marks. Examples of LMR’s CAH promotion efforts include:

a. LMR markets its CAH restaurant services through various advertising media, including on the Internet at www.carolinaalehouse.com. From this website, users and guests can learn about specials and events happening at the CAH restaurants,

can access the CAH online newsletter, access photo galleries of various events hosted by the CAH, and can learn about CAH’s philanthropy and community involvement.

b. LMR markets the CAH brand on social media sites including Facebook (www.facebook.com/CarolinaAleHouseOfficial) and Twitter (twitter.com/carinalehouse). In addition to the main CAH sites, many CAH locations also have individual Facebook pages and Twitter feeds where they

communicate with the patrons of those locations. For example, the CAH's Cary location's Facebook page includes ticket give-aways, announcements of upcoming events, and news.

- c. For nearly 10 years, LMR has been a major sponsor of the Carolina Hurricanes professional hockey team. The CAROLINA ALE HOUSE mark is visible both in-game and on national television advertising spots during Hurricanes' games. Additional high-profile promotions associated with the Hurricanes include away game viewing parties at selected Carolina Ale House locations in the Triangle with appearances by the Hurricanes' mascot and cheerleaders.
- d. LMR further advertises in print media, newspapers, trade journals, magazines, signs, banners, and on numerous promotional materials.
- e. LMR recently received a national accolade, the VIBE Vista Award, for excellence in its menu design, which prominently features the CAROLINA ALE HOUSE mark.

15. The CAH brand is the main brand used by LMR and its authorized licensees. The CAH brand is used on signs, menus, advertisements, the Internet, and social media. Examples of the CAH brand used in signs, advertisements, and menus are shown below:





Lunch Specials
Wednesday July 16, 2014
Served: 11am - 4pm

Honey Mustard Chicken Grinder.
Pulled marinated chicken with cheddar and bacon toasted onto a hoagie roll with honey mustard, shredded lettuce and tomato served with Ale House fries.
\$6.99

Chicken Parmesan.
Fried chicken breast topped with our home made marinara and melted mozzarella and parmesan cheese. Served on a bed of penne.
\$8.99

Chili Chicken Burrito.
Diced grilled chicken with cheddar cheese in a soft tortilla topped with chili, more cheddar, sour cream and green onions. Served with Ale House rice.
\$7.99

Soups of the Day

Red Bean and Audubon
French Onion
CAH Chili

*Many of our soups are made with meat stock. Ask for dietary concerns.

Drink Specials

\$2.50 Miller Lt. pints
\$3.00 Jager and Jager spice shots
\$3.50 Blue Moon Pints
\$3.25 Bud and Bud Lt. aluminum Buckets
\$15.00 Bud & Bud Lt. Aluminum Buckets

CHECK THIS OUT!

Check us out on Face Book to find out about all our daily specials and upcoming events!

Pick Two!

Daily Half Sandwich,
Soup or Salad Lunch Combo

Buffalo zingers on a Hoagie Roll

All orders w/ 10% off French Dressing

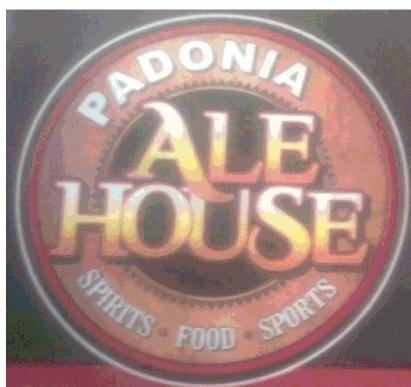
North Carolina: Raleigh @ Brier Creek • Cary • Charlotte • Durham • Fayetteville • Greenville • N. Raleigh • Raleigh
RDU Airport • Wake Forest • Winston • Jacksonville • Concord • Coming Soon: Downtown Raleigh • Winston-Salem
South Carolina: Columbia • Columbia @ The Vista • Downtown Greenville • Greenville • Coming Soon: Charleston • Summerville
Georgia: Augusta Florida: Bradenton Beach • Doral • Weston • Texas: Coming Soon: Dallas

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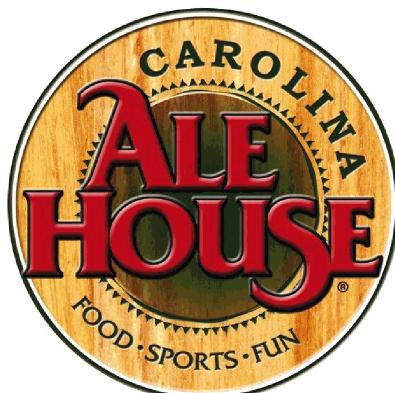
16. The CAH brand is well known, built on considerable good will, and has a strong, positive reputation. Consumers have come to know the CAH for its commitment to serving quality food in sports-themed environments reminiscent of the community-centric ale houses in the United Kingdom.

17. In 2013, an LMR employee saw Padonia's logo and initially was confused in thinking that LMR was opening a new CAH location. LMR then learned that Padonia was using LMR's CAH logo without LMR's permission. LMR investigated and learned that Padonia had recently changed from doing business as "Padonia Station" to "Padonia Ale House." As part of its rebranding, Padonia blatantly copied LMR's registered CAH trademark, made minor changes,

and branded Padonia's restaurant with a confusingly similar mark. Examples of Padonia's use of this confusingly similar mark are shown below:



18. A side by side comparison of the CAH mark and the Padonia mark show the confusing similarity between the marks.



19. Padonia copies nearly every significant aspect of the CAH logo. In particular, the Padonia and CAH logos use the same font, background, layout, and nearly identical verbiage and colors. The Padonia logo even copies details of the CAH logo, such as the circle of small

triangles around the inner circumference of the wooden ring. The Padonia logo attempts to mimic the stylized changes LMR made to the A in Ale and the S in House.

20. Padonia is using its logo to offer identical services as those offered by LMR under the CAH logo, namely restaurant and sports bar services.

21. LMR and Padonia offer their services to the same group of consumers through the same channels. Both LMR and Padonia offer brick and mortar restaurants to consumers who enjoy casual restaurants and sports bars. LMR and Padonia both maintain presences on social media sites, to include Facebook and Twitter, and both advertise through Internet webpages.

22. Soon after discovering of Padonia's logo, LMR informed Padonia in writing of LMR's rights and requested that Padonia immediately cease using the logo. Other than acknowledging receipt of the letter, Padonia did not respond and continues to use the logo to this day, with full knowledge of LMR's rights in the CAH logo.

23. Padonia continues to use its infringing copy of the CAH logo, in willful violation of LMR's rights.

COUNT I
Infringement of a Registered Trademark, 15 U.S.C. § 1114.

24. LMR realleges paragraphs 1-23.

25. LMR owns incontestable federal Trademark Registration No. 3,038,753 for the CAH logo shown below:



26. LMR uses its CAH logo in conjunction with restaurant and sports bar services.

27. Padonia uses a mark confusingly similar to LMR's CAH logo to offer restaurant and sports bar services.

28. LMR and Padonia target the same group of consumers, namely consumers who enjoy sports bars and casual restaurants, through the same channels of trade, to include the Internet and social networking websites.

29. Padonia's use of its infringing logo in conjunction with restaurant services.

30. On information and belief, Padonia's copying has been deliberate, willful, intentional, and in bad faith, with disregard of LMR's rights and with intent to deceive or to create mistake or confusion in the minds of consumers.

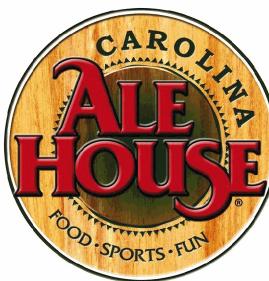
31. Upon information and belief, Padonia's wrongful conduct has permitted Padonia to earn substantial revenues and profits on the strength of LMR's registered CAH logo and goodwill.

32. LMR cannot be adequately compensated for these injuries by damages alone, and has no adequate remedy at law for Padonia's infringement. LMR is entitled to injunctive relief, as well as enhanced damages and attorneys' fees.

COUNT II
Trademark Infringement, 15 U.S.C. § 1125(a).

33. LMR realleges paragraphs 1-32.

34. LMR owns common law trademark rights in the colored CAH logo shown below:



35. LMR uses its colored CAH logo in conjunction with restaurant and sports bar services.

36. Padonia uses a mark confusingly similar to LMR's colored CAH logo to offer restaurant and sports bar services. Padonia's confusingly similar mark uses similar colors and backgrounds as those found in the colored CAH logo.

37. LMR and Padonia target the same group of consumers, namely consumers who enjoy sports bars and casual restaurants, through the same channels of trade, to include the Internet and social networking websites.

38. Padonia's use of its infringing logo in conjunction with restaurant services

39. On information and belief, Padonia's copying has been deliberate, willful, intentional, and in bad faith, with disregard of LMR's rights and with intent to deceive or to create mistake or confusion in the minds of consumers.

40. Upon information and belief, Padonia's wrongful conduct has permitted Padonia to earn substantial revenues and profits on the strength of LMR's colored CAH logo and goodwill.

41. LMR cannot be adequately compensated for these injuries by damages alone, and has no adequate remedy at law for Padonia's infringement. LMR is entitled to injunctive relief, as well as enhanced damages and attorneys' fees.

COUNT III

Unfair and Deceptive Trade Practices, MD. Code Ann., Com. Law, § 13-301.

42. LMR realleges paragraphs 1-41.

43. LMR owns trademark rights in the CAH logo and colored CAH logo shown below:



44. LMR uses its CAH logos in conjunction with restaurant and sports bar services.

45. Padonia uses a mark confusingly similar to LMR's CAH logo to offer restaurant and sports bar services.

46. LMR and Padonia target the same group of consumers, namely consumers who enjoy sports bars and casual restaurants, through the same channels of trade, to include the Internet and social networking websites.

47. Padonia's use of its infringing logo in commerce to sell, offer for sale, distribute, or advertise goods and services is likely to cause confusion, mistake, or deception among consumers.

48. Padonia's use of its infringing logo is a misleading visual description or other representation which has the capacity, tendency, or effect of deceiving or misleading consumers.

49. Padonia's use of its infringing logo represents that Padonia has a sponsorship, approval, status, affiliation, or connection with LMR when, in fact, Padonia has no such sponsorship, approval, status, affiliation or connection with LMR.

50. On information and belief, Padonia's copying has been deliberate, willful, intentional, and in bad faith, with disregard of LMR's rights and with intent to deceive or to create mistake or confusion in the minds of consumers.

51. Upon information and belief, Padonia's wrongful conduct has permitted Padonia to earn substantial revenues and profits on the strength of LMR's registered CAH logo and goodwill.

52. LMR cannot be adequately compensated for these injuries by damages alone, and has no adequate remedy at law for Padonia's infringement. LMR is entitled to injunctive relief and monetary damages.

COUNT IV
Copyright Infringement, 17 U.S.C. § 501.

53. LMR realleges paragraphs 1-52.

54. LMR owns the distinctive artwork comprising the CAH stylized logo.

55. LMR filed a U.S. copyright application to register the CAH stylized logo with the Copyright Office. The Copyright Application is complete and was accompanied by the necessary fees and with a copy of the deposit material for the CAH logo. That logo is shown below:



56. Padonia prepared a derivative work of LMR's copyrighted stylized logo, and reproduced and distributed copies of the same to the public without LMR's permission.

57. On information and belief, Padonia's copying has been deliberate, willful, intentional, and in bad faith, with disregard of LMR's rights.

58. LMR cannot be adequately compensated for these injuries by damages alone, and has no adequate remedy at law for Padonia's infringement. LMR is entitled to injunctive relief, as well as monetary damages.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully prays the Court to:

- A. Find that Padonia infringed LMR's rights in its CAH marks and that such infringement was willful;
- B. Find that Padonia infringed LMR's copyright in the CAH stylized logo and that such infringement was willful;
- C. Grant LMR its actual damages in an amount to be determined at trial;
- D. Disgorge Padonia's profits obtained for sales under the infringing marks;
- E. Permanently enjoin Padonia from using the CAH marks and any marks confusingly similar thereto, as well as LMR's stylized CAH logo artwork;
- F. Order the destruction of all articles bearing the infringing mark;
- G. Find this case exceptional and grant LMR its attorneys' fees pursuant to the Lanham Act;
- H. Order the costs of this action and prejudgment interests be taxed against Padonia; and
- I. Grant LMR such other and further relief as the Court may deem just and proper.

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DEMAND FOR JURY TRIAL

LMR demands a trial by jury be held on all issues so triable.

Dated: August 26, 2014.

/s/ J. Stephen Simms
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